

(a) If the total or the allocated portion of the pension payments made in such months equals the total of the unpaid annuities due the latter amount shall be canceled

(b) If the total or the allocated portion of the pension payments made in such months exceeds the total of the unpaid annuities due the latter amount shall be canceled and the difference shall be deducted from annuities subsequently becoming due

(c) If the total or the allocated portion of the pension payments made in such months is less than the total of the unpaid annuities due the individual shall be paid the difference

(d) If under either paragraphs (a) (b) or (c) of this section the annuity payments have been made for the month or months or fractional portions thereof in which the pension payments were made or if for any other reason it is in the judgment of the Board inequitable or impractical to cancel or reduce the annuity payments for such month or months the unpaid annuity payments for the succeeding month or months shall be canceled or reduced

(e) In any case wherein the payment of an annuity or a pension was based upon fraudulent or erroneous information or statements submitted by the individual to whom payment has been made or his employer, or both the Board may require from the individual or the employer submitting such fraudulent or erroneous information or statements reimbursement of any amounts thus paid and in addition thereto shall cause to be taken under section 13 of the act (50 Stat 316 45 U S C Sup 228m) such action as it deems proper under the circumstances

#### § 240 7 Pension by Board not to affect additional payments by employer

In any case wherein the pensioner eligible under section 6 of the act was receiving a pension or gratuity from an employer the payment by the Board of a pension under section 6 of the act shall have no effect upon the payment by the employer of such additional gratuities as it sees fit nor upon any trust fund created for the payment of pensions or gratuities

[Board Order 60-58 25 F.R 3819 Apr 30 1960]

## PART 250—REPORTS, INFORMATION, HEARINGS AND WITNESSES

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**AUTHORITY** §§ 250 1 to 250 16 issued under sec 10 50 Stat 314 as amended 45 USC 228j Additional authority is cited in parentheses following sections affected

**SOURCE** §§ 250 1 to 250 16 appear at 4 F R 1495 Apr 7 1939 except as otherwise noted

### § 250 1 Duty to furnish information and records

(a) *General* In connection with any matter or inquiry directly or indirectly involving (1) the employer status of any individual person or company (2) the employee or pension status of any individual, (3) the amount and creditability of service and compensation or (4) any other matter arising in or necessary for the administration of the Railroad Retirement Acts of 1935 or 1937, the Board may require any individual person or company to furnish or submit in such form and at such times as the Board may require any information, records contracts documents reports or other material within their possession or control that in the judgment of the Board, may have any bearing upon such matter or inquiry

(b) *Information concerning change of status* It shall be the duty of each employer promptly to notify the Board of the occurrence of any event incident or change in the operations ownership or control of the employer which affects its status as an employer, under the Railroad Retirement Acts or the Railroad Unemployment Insurance Act or of any change in the ownership or control by

the employer in any company which would affect the status of such company as an employer under the Railroad Retirement Acts or the Railroad Unemployment Insurance Act or of the acquisition of ownership or control by the employer of any company which would give such company a status as an employer under said acts. The notice should contain a description of the event incident, or change the date or dates thereof the number and general description of employees thereby affected and such other data as may be necessary to advise the Board fully of the effect of the particular change.

[4 F.R. 1495 Apr. 7 1939 as amended by Board Order 40-197 5 F.R. 1468 Apr. 20 1940]

**§ 250 2 Employer to notify of death of employee**

Each employer shall notify the Board of the death of any employee in active employment, and when known of the death of any employee in an employment relation within 30 days following the receipt by the employer of notice of such death. Such notice and any information which the Board may require in connection therewith shall be submitted on the form provided by the Board for that purpose.

[Board Order 41-435 6 F.R. 5305 Oct. 18 1941]

**§ 250 3 Employers' reports of compensation of employees**

(a) Each employer shall in accordance with instructions issued by the director of wage and service records file with the Board (1) on or before the last day of each month a report of the compensation adjustments appearing on pay rolls or other disbursement documents for the month immediately preceding such month (2) on or before the last day of the month immediately following the end of each calendar quarter a summary of compensation adjustments reported for the quarter and (3) on or before the last day of the month immediately following the end of each calendar quarter or for employers authorized to report annually on or before the last day of the month immediately following the end of each calendar year.

(1) A report of the compensation paid to each employee for the calendar quarter or calendar year respectively showing with respect to each employee his name his account number and, except in the case of an employee of a railway-

labor-organization employer his occupational class under the appropriate Interstate Commerce Commission occupational classification as supplemented or varied for this purpose by instructions issued by the director of wage and service records and approved in this respect by the director of research.

(ii) A summary report of the compensation of the employees for the period covered by the report.

If such last day of the month is a Sunday or legal holiday the report may be filed on the next following business day. If placed in the mails the report shall be posted in ample time to reach the office of the Board at Chicago Ill. under ordinary handling of the mails on or before the date on which the report is required to be filed. Authorization to file reports on dates later than prescribed in this section may be granted by the director of the bureau of wage and service records.

Authorization to report annually the compensation paid to each employee shall be granted upon application by the employer to the director of wage and service records and the approval of such application by the Board.

(b) An employer having intermittent or seasonal pay rolls shall file a summary report of compensation for each quarter or year in which no pay roll was maintained and shall show "Nil" in the space provided for reporting the compensation.

(c) Upon termination of employer status as determined under §§ 202 11 and 202 12 of this chapter a final report of compensation of employees shall be submitted. The summary report of compensation shall be marked "Final Compensation Report" and the period covered by the report shall be indicated. Such report shall be filed with the Board on or before the last day of the month following the final month for which there was compensated service.

(Sec. 8 50 Stat. 313 as amended 45 U.S.C. 228h) [Board Order 47-1 12 F.R. 470 Jan. 23 1947]

**§ 250 4 Registration of employees**

(a) Each employer shall require each employee who cannot furnish satisfactory evidence of having previously filed an employee registration form provided by the Board to execute such form, and shall complete and file such form with the Board by whichever is the earlier of (1) 30 days after the date on which such

employee first performed compensated service for such employer or (2) the date upon which such employer first files with the Board a report of the service and compensation of such employee

(b) Each employer shall also, when so required by the Board deliver account number cards to employees and shall furnish the Board with such notice of multiple account numbers and corrections in identifying data as may be required by instructions issued by the director of wage and service records

[Board Order 41-435 6 F.R. 5306 Oct 18 1941]

#### § 250 5 Employers to transmit annual statements of compensation

Each employer shall transmit to each of its employees an annual statement, prepared by the Board and forwarded to such employer, of the service months and compensation credited to such employee on the records of the Board. Such statements shall be transmitted to the employees within 30 days of the date on which they are forwarded by the Board to the employer. *Provided, however* That statements which cannot be transmitted to the employees within such 30 days shall be held for a further 30 days and be returned to the Board at the end of 60 days

[Board Order 41-435 6 F.R. 5306 Oct 18 1941]

#### § 250 6 Reports of employee representatives

An initial report setting forth the facts upon which he bases his status as an employee representative will be required of an individual claiming such a status. If the facts establish to the satisfaction of the Board that the individual claiming such status is an employee representative within the meaning of the act and the regulations in this chapter he will be so advised and will thereafter be required to furnish to the Board periodic reports of his compensation as such from and after January 1 1937. These reports will be used for the adjudication and computation of his annuity upon qualification therefor. Proper forms and instructions will be furnished from time to time for use in making these reports

#### § 250 7 Hearings

To such extent as may be necessary to determine (a) the employee or pension status of any individual or group of indi-

viduals (b) the employer status of any company or person and (c) any other matter arising in or necessary for the administration of the Railroad Retirement Acts of 1935 and 1937 the Board may itself or through a member or a designated subordinate or subordinates, require and compel the attendance of witnesses and the production of records and documents administer oaths, take testimony, make all pertinent investigations and findings of fact and render decisions upon such findings

#### § 250 8 Witnesses

(a) In any hearing before the Board, a member thereof or a designated subordinate or subordinates, or the Appeals Council or a member thereof, witnesses may be summoned to appear and give testimony

(b) Designation by the Board of any person or persons to preside at and conduct such hearings shall constitute a delegation of authority to such person or persons to require and compel the attendance of witnesses, to administer oaths and to take testimony

#### § 250 9 Application for witnesses

The Board, a member thereof or a designated subordinate or subordinates or the Appeals Council or a member thereof conducting a hearing may upon its or their own motion or upon application of any party to such hearing issue a subpoena for a witness or witnesses. The application shall be by affidavit filed with the body or person conducting the hearing within such period of time as will permit service and return of a subpoena prior to the date set for the hearing at which the witness is to appear but in no case shall such application be filed later than 10 days prior to the date of hearing. The application shall set forth

- (a) The name of the witness
- (b) His address
- (c) The title of the matter to be heard, i e names of parties
- (d) The issue to which the testimony of the witness will be directed
- (e) The substance of the testimony which such witness is expected to give or the facts to which such witness will testify

(f) The books papers or documents which are requested if a subpoena duces tecum is applied for

In addition to the above the party filing such application shall, at the time of

filing, deposit therewith a sum of money sufficient to cover the fees and mileage of the witness or in lieu thereof shall state in the application that satisfactory arrangements have been made with the witness for the direct payment of his fees and mileage and any other allowable expense

**§ 250 10 Petition for summoning recalcitrant witnesses**

(a) In connection with any hearing a party thereto may petition the Board a member thereof or a designated subordinate or subordinates or the Appeals Council or a member thereof to subpoena, upon its or their own motion a witness or witnesses. The petition shall be in writing under oath and be filed with the body or person conducting the hearing within the time limit prescribed for an application for subpoena, shall set forth the same information required in an application for subpoena and in addition thereto shall show (1) that the person or persons named therein as witnesses will not appear voluntarily and (2) that a failure of such person or persons to appear and testify will operate to prejudice substantive rights of the petitioner

(b) The body or person designated to conduct the hearing shall upon receipt of the petition determine whether the fact to which it is alleged the witness will testify or the testimony which it is alleged the witness will give is material and relevant and if such body or person finds that such fact or testimony is material and relevant it or he shall either subpoena such witness upon its or his own motion or by agreement of all parties to the hearing except the petitioner shall stipulate and agree in the record that such witness would testify as alleged in the petition or (if the petition be for the production of books papers or documents) that the records requested would appear as alleged. The body or person shall also have the power to deny any part of a petition which in its or his judgment is not material or relevant to the issues to be heard. If in the judgment of the body or person designated to conduct the hearing the testimony which it is alleged the witness will give is merely cumulative or immaterial or irrelevant the petition may be denied

**§ 250 11 Service of subpoenas**

Service of subpoenas issued under § 250 8 shall be made by any individual designated by the Board. Such individ-

ual shall deliver to the person or persons named therein a copy of the subpoena and at that time tender to the person or persons the fees for one day's attendance and the mileage allowed by law, *Provided however* That if the witness or witnesses be summoned to appear upon motion of the body or person designated to conduct the hearing no fees or mileage need be tendered. Fees and mileage allowed shall be in the same amount as is allowed to witnesses in the courts of the United States

**§ 250 12 Returns**

The person serving the subpoena shall make affidavit on the original subpoena of the manner and time of service and shall file such original subpoena with the person or body by whom it was issued

**§ 250 13 Examiners**

The Board may refer proceedings to an examiner for hearing and determination of any or all issues raised. Such appointment made in writing and entered upon the minutes of the Board shall constitute authorization for the examiner to preside at and conduct hearings require and compel the attendance of witnesses administer oaths, take testimony and cause the same to be recorded and do such other acts as may be necessary for the hearing and determination of the issues referred

**§ 250 14 Exhibits**

Copies of all exhibits admitted in evidence at any hearing shall be furnished by the party offering the same to all other parties participating or entering appearance in the proceedings

**§ 250 15 Procedure when examiner appointed**

(a) When the taking of testimony has been completed, the examiner shall as soon as practicable mail to the parties at the address stated in their appearances a free transcript of the record of the proceedings had before the examiner. In the event that more than two parties have appeared at the hearing the examiner shall make available as many copies of the transcript as there are different positions represented by requiring each group of parties representing the same position to designate the person or office to whom their one free copy shall be mailed. Thereafter the examiner shall give all parties participating in the hearing the opportunity

for presentation to him of argument upon both law and facts. Upon conclusion of the proceedings before him the examiner shall prepare an examiner's report, which, together with the record of the proceedings before him shall be submitted to the Board. The report shall set forth the examiner's findings of fact conclusions of law and recommendations as to decision. The report may also contain such discussion of the question raised both legal and factual as the examiner may desire to present to the Board.

(b) A copy of the examiner's report shall be served by the examiner upon each party participating in the hearing by mailing such copy to him at the address stated in his appearance.

(c) Each party shall within 20 days (exclusive of Sundays and legal holidays in the District of Columbia) after the date of mailing to him of the examiner's report file with the Board and serve upon other parties by mailing to their addresses as stated in their appearances such exceptions in writing as he desires to make to the examiner's findings of fact and conclusions of law. Each exception shall specifically designate the particular findings of fact or conclusion of law to which objection is taken and shall set forth in detail the grounds of the objection. General exceptions and exceptions not specifically directed to particular findings of fact or conclusions of law will not be considered by the Board. Exceptions to findings of fact shall make specific reference by page numbers to those portions of the record upon which reliance is placed.

(d) Each party shall have 10 days after receipt of exceptions taken by other parties in which to file with the Board replies to the exceptions. Replies to exceptions to findings of fact shall make specific reference by page numbers to those portions of the record upon which reliance is placed.

(e) The Board may upon the application of a party and for cause shown extend the time for filing and serving of exceptions or filing of replies thereto.

(f) The Board will render its decision upon the record the examiner's report and such exceptions and replies thereto as are made. Where the record is voluminous (more than 100 pages including exhibits) the Board will consider only such points of law and fact as are specifically raised by the exceptions and

such other points, if any, which it deems necessary for decision, and will examine only those portions of the record to which its attention is specifically directed and such other portions of the record if any as the Board deems necessary.

(g) The examiner's report shall be advisory only and the Board may in any case, exercise its right to reject or adopt the examiner's report in whole or in part or adopt such report with modifications. The examiner's report while advisory shall nevertheless be presumed to be correct. Findings of fact to which no exceptions are taken will subject only to the power of the Board upon its own consideration to reject or modify stand confirmed.

(h) The decision of the Board shall be communicated to the parties participating in the hearing within 30 days of the date upon which the decision of the Board is entered upon its records.

#### § 250 16 Board decisions and opinions and dissenting opinions

The following regulation shall apply to all decisions of the Board except decisions relating to matters of internal administration.

A decision made by at least two members of the Board shall constitute the decision of the Board. The decision of the Board shall be stated in a written opinion filed in the record of the proceedings. Such opinion shall set forth the reasons for the decision either in full or by reference to previous decisions of the Board or by adoption of the reasons stated in the decision or recommendation of a subordinate or subordinate body of the Board. Any decision of the Board made by two members shall constitute the unanimous decision of the Board, unless within 10 days of the filing of the Board decision a third member of the Board shall file a minority opinion setting forth his dissent and the reasons for his disagreement with the decision and opinion of the Board.

#### PART 255—RECOVERY OF ERRONEOUS PAYMENTS

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